

REMARKS

This is a second amendment after final action filed under 37 C.F.R. § 1.116 to correct matters of form and to overcome a rejection under 35 U.S.C. § 112, first paragraph, in accordance with the advice and instructions on page 4 of the final Office Action mailed on February 23, 2011 and on page 2 of the advisory action dated May 5, 2011. The advisory action responded to a first amendment after final action and request for reconsideration filed on April 20, 2011, which consisted entirely of legal arguments for withdrawal of the sole remaining rejection, namely the rejection of the pending claims under 35 U.S.C. § 112, first paragraph, for lack of enablement.

According to 37 C.F.R. 1.116 changes may be made as a matter of right after a final action if they are made to comply with a requirement of form expressly set forth in a previous Office Action.

The final Office Action and the advisory action both pointed out contradictions and inconsistencies in the written description regarding whether the cutting blade 5 moves in the direction of the arrow 32 in fig. 1 or instead the shearing blades 2, 3 move in the

direction of the arrow 32. Particularly page 4 of the final Office Action expressly points out the following wording on page 4 of the applicant's specification: "capable of being displaced manually in the slit in the direction of the arrow (arrow 32) via the lever 33". Also the final Office Action pointed out the wording "lever 33 for manually adjusting the cutting blade 5 has been shown in dashed lines" on page 6 of the applicant's specification. The Office Action contends that this wording contradicts or is inconsistent with other wording on page 4 of the specification that states that the cutting length adjuster functions according to the principles of operation of a similar device in EP 0 856 386 B1.

According to applicant's understanding correcting inconsistencies or contradictions in the written description of an invention are matters of form, which have been expressly described in the final Office Action. Accordingly their correction is a matter of right in accordance with 37 C.F.R. § 1.116 (b) (2). Also their correction does not introduce "new matter", because, as already pointed out in the final Office Action, the specification also teaches that the shearing blades 2, 3, are adjusted or shifted in the direction of arrow 32, by the mechanism disclosed in the EP reference.

In any case, in the event that their entry is not considered a matter of right, entry of the above specification changes will put the application in a better condition for appeal, if that is necessary. Hence in that case entry of the proposed changes in the specification is respectfully requested.

The changes in the specification paragraphs on page 4, lines 12 to 20, and page 6, line 21, to page 7, line 4, would eliminate the inconsistencies and contradictions in the original written description and cure the deficiencies pointed out on pages 3 and 4 of the final Office Action. Of course it is the shearing blades 2, 3, which are moved in the direction of arrow 32 by manual operation of lever 33 of the adjusting device 9, which is attached to the housing of the hair cutting machine 4 – since that is apparent from a study of the mechanism of the length adjuster of EP 0 856 386 B1. The cutting blade 5 only oscillates in a direction that is perpendicular to the direction of the arrow 32, i.e. transversely across the cutting head.

The specification contains sufficient disclosure to support the above changes in the two paragraphs, which are thus not new matter. The support includes the disclosure of a prior art reference, EP 0 856 386 B1, which discloses the basic principle of the device for adjusting the cutting length and also the wording on page 4,

lines 14 to 20, which is as follows: "This hair cutting length adjuster 9 is in principle known..... the two shearing blades 2, 3 solidly joined to one another are displaceable/adjustable relative to the cutting blade 5". This clearly states that it is the shearing blades that are moved by the length adjuster 9, not the cutting blade 5. Also that it is the shearing blades that move in the direction of the arrow 32 is apparent from a study of figs. 1, 2, 4, 5, 11, and 12 and the associated written description.

Review and reconsideration of the reasons to withdraw the rejection for failing to comply with the enablement requirement in the first amendment after final action is respectfully requested. Unfortunately the description of the claimed invention in the request for reconsideration (**RFR**, first amendment after final rejection) was in error in several places. First the last sentence of the first paragraph in section I on page 3 of the REMARKS in the **RFR** is incorrect – the correct sentence is: "Because of the aforesaid components and their connections the shearing blades 2, 3, are movable by the adjusting device 9 in the direction of arrow 32 in fig. 1 relative to the cutting blade 5, which reciprocates transversely in the slit 31, i.e. perpendicular to the direction of the arrow 32."

Of course the quotation from page 4, lines 12 to 20, of the applicant's specification on page 4 has been amended by the above changes. The same is true of the quotation from the applicant's specification on pages 5 to 6 of the RFR.

The explanation of the structure and operation of the hair cutting length adjuster 9 on pages 6 to 9 of the RFR is basically correct. If there are doubts regarding the support for the amended claim 1, it is respectfully suggested that the explanation on pages 6 to 9 of the RFR should be reviewed.

However a reference number correction and several minor grammar changes were also made in the above two paragraphs in the written description. Entry of these latter obvious minor changes in the written description is respectfully requested.

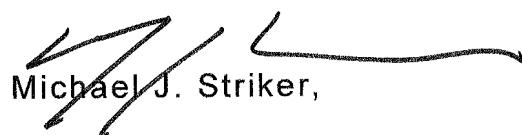
For the aforesaid reasons and for the reasons set forth in the amendment after final action filed on April 20, 2011 as well as the above-described changes in the specification, withdrawal of the rejection of claims 1, 2, 4, and 7 to 12 under 35 U.S.C. § 112, first paragraph, for containing subject matter that was not described in the specification in such a manner as to enable one skilled in the art to make and/or use the claimed invention, is respectfully requested.

Furthermore the pending claims 1, 2, 4, and 7 to 12 were found to be "free of the prior art" in the final Office Action, but were not allowed only because of the rejection under 35 U.S.C. § 112, first paragraph. Accordingly favorable allowance of pending claims 1, 2, 4, and 7 to 12 is respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawing be further amended or corrected in formal respects to put this case in condition for final allowance, then it is requested that such amendments or corrections be carried out by Examiner's Amendment and the case passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing the case to allowance the Examiner is invited to telephone the undersigned at 1-631-549-4700.

In view of the foregoing, favorable allowance is respectfully solicited.

Respectfully submitted,


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